

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b><i>In re: Dairy Farmers of America, Inc.</i></b>	)	
<b>Cheese Antitrust Litigation</b>	)	<b>Master File No. 09-cv-03690</b>
	)	<b>MDL No. 2031</b>
	)	
	)	<b>Judge William J. Hibbler</b>
	)	
	)	
<b>THIS DOCUMENT RELATES TO:</b>	)	
<b>DIRECT PURCHASER ACTION</b>	)	<b>Oral Argument Requested</b>
	)	

**DEFENDANTS HANMAN'S AND BOS'S MOTION TO DISMISS  
COUNTS ONE, TWO AND THREE (ANTITRUST CLAIMS)  
OF THE CONSOLIDATED CLASS ACTION COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Gary Hanman and Gerald Bos move that Counts One, Two and Three of the Consolidated Class Action Complaint be dismissed as against them for failure to state a claim upon which relief can be granted. Those Counts allege, respectively, conspiracy in restraint of trade, monopolization and attempted monopolization in violation of Sections 1 and 2 of the Sherman Act. Count One must be dismissed because it fails to allege a cognizable conspiracy involving Hanman and Bos, and Counts Two and Three must be dismissed because Plaintiffs fail to allege the requisite inherently wrongful conduct on the part of either Hanman or Bos, or that either Hanman or Bos possessed the requisite monopoly power or the ability to acquire it.

Defendants Hanman and Bos are submitting a Memorandum in support of this Motion.

Defendants Hanman and Bos further join in the motion to dismiss being filed by Defendants Dairy Farmers of America, Inc. and Keller's Creamery, LP, and in the motion to dismiss being filed by Defendants Frank Otis and Glenn Millar.

Dated: May 19, 2010

Respectfully submitted,

By: /s/ Walter C. Greenough  
Walter C. Greenough  
William M. Hannay  
Jacob L. Kahn  
SCHIFF HARDIN LLP  
233 S. Wacker Dr., Suite 6600  
Chicago, IL 60606  
Tel: (312) 258-5500  
wgreenough@schiffhardin.com  
whannay@schiffhardin.com  
jkahn@schiffhardin.com

/s/ Ellen M. Wheeler  
Scott E. Early  
Ellen M. Wheeler  
Rebecca Hanson  
FOLEY & LARDNER LLP  
321 N. Clark St., Suite 2800  
Chicago, IL 60654  
Tel: (312) 832-4500  
searly@foley.com  
ewheeler@foley.com  
rhanson@foley.com

*Counsel for Defendants Gerald Bos  
and Gary Hanman*

**CERTIFICATE OF SERVICE**

I, Jacob L. Kahn, hereby certify that on May 19, 2010, I served *Defendants Hanman's and Bos's Motion to Dismiss Counts One, Two and Three (Antitrust Claims) of the Consolidated Class Action Complaint and accompanying Memorandum of Law* on all counsel of record pursuant to ECF as to Filing Users. I also served the foregoing documents via U.S. Mail Delivery on the following counsel:

Paul W. Rebein  
**REBEIN LAW FIRM PLLC**  
500 East Kennedy Blvd., Suite 100  
Tampa, FL 33602

/s/ Jacob L. Kahn  
Jacob L. Kahn